

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

KEITH PILLICH

Case No. 94-10400 K

Debtor

The Debtor, Keith Pillich, is an inmate in a correctional facility. On May 18, 1994 there was docketed a submission from him, mailed from the facility in Sonyea, N.Y. It is styled as "Appeal of Decision to Lift Stay on home at 2438 West Oakfield Rd. Grand Island, NY and conversion to Ch. 7 from Ch. 11." Rather than appealing to higher court, however, it asks that I set aside my orders of May 6, 1994, April 22, 1994 and April 25, 1994. I will therefore treat it initially as a Motion for Reconsideration, and although it is untimely, I will treat it as if it were timely.

I will consider a number of the Debtor's grievances in series.

A. He complains that he was not served with the requisite Notices and Orders. In fact, he confuses "service" with "receipt." He was "served" in accordance with Bankruptcy Rule 7004(b)(9), and personal service is not required either on him or his non-debtor spouse. Furthermore, an affidavit of personal service of the Rupp motion is on file. In any event, whether or not he admits to receiving his mail, there is no doubt that he had full knowledge of all of the proceedings and orders in question.

An attorney called chambers on his behalf on or about April 26, 1994. His wife and his mother attended the § 341 meeting on his behalf on March 28, 1994.¹ His wife has received all notices and orders at his residence address. He has filed several letters and affidavits. His wife filed an affidavit on April 22, 1994. It is not the Court's duty to assure that a voluntary bankrupt receives personal service, rather than mail service, just because he has gotten himself committed to prison after he filed his voluntary Chapter 11 petition. As Congress has stated, this is not a haven for criminal offenders. (H. Rept. No. 95-595 to accompany H.R. 8200, 95th Cong., 1st Session (1977) pp. 340-344, discussing 11 U.S.C. § 362(b)(1).)

B. Pillich asserts various rights including Due Process rights and special rights as the parent of a disabled child. He confuses his rights as one convicted of a crime under principles of criminal justice, and as an inmate in a jail, with rights of a Debtor under Title 11, U.S.C. A voluntary debtor's rights in this Court depend upon his performance of his duties (See 11 U.S.C. § 521). Violation of those duties is grounds for conversion of a Chapter 11 case to Chapter 7. (11 U.S.C. § 1112(b),(e)) and for denial of discharge (11 U.S.C. § 727(a)). Since the day this

¹Pillich similarly sent his wife and mother to appear before me on or about March 2, 1993, after I had directed him to respond only in writing or by counsel in a related case (Projects & Joint Ventures, Inc., Case No. 91-12953K).

Debtor filed his voluntary Chapter 11 petition on February 16, 1994, he has not complied with a single duty of a debtor. He has not filed a schedule of assets and liabilities, and as a Debtor-in-Possession he did not comply with the U.S. Trustee's request for evidence of adequate insurance or of the opening of a Debtor-in-Possession account. (He does not have to be out of jail to file a schedule of assets, to provide the name of his insurance agent, to disclose his transfers , etc.) Having submitted himself and his assets voluntarily to the jurisdiction of this Court, he may not complain of the consequences of his failure to perform his duties to his creditors and this Court.

C. Even to this day, four months into the case, Pillich offers not the slightest disclosure of assets or evidence of an ability to reorganize. He merely complains that this Court's Orders denied him of his "entitlements." He says he is "entitled to reaffirm a debt for [his] primary residence and renegotiate with lenders in order to keep exempt property." As to this claim it must be noted that: (a) the land secured by the Rupp mortgage is not his property, it is his wife's property, and thus cannot be claimed exempt by him; (b) to "reaffirm" is to negotiate a reaffirmation agreement with the creditor, as opposed to merely declaring an intent to repay the debt, and (3) Rupp prosecuted the motion to lift stay, thus evidencing no desire to engage in the reaffirmation "negotiations" to which Pillich claims "entitlement." In any event, all this Court did with regard to Marsha Pillich's

real estate is to lift the § 362(a) stay of foreclosure. The parties were left free to negotiate as to that mortgage if they wished. No "entitlement" in that regard has been denied.

D. The Debtor complains that I have denied him the opportunity to convert his case to a case under Chapter 13, which Chapter will "soon provide \$1,000,000 limits for workout." Currently, the statutory limit for Chapter 13 is a maximum of \$100,000 in unsecured debt, which is well exceeded by Pillich, who owes \$556,400.00 in criminal restitution claims alone. Although the dollar limits for Chapter 13 might "soon" be raised by Congress (legislation is pending), Pillich has no right to make Rupp or other creditors await that development. For his violations of the fiduciary duties of a Debtor-in-Possession, the only options were dismissal of the case or conversion to Chapter 7. I found that conversion was in the best interest of creditors and the estate. (11 U.S.C. § 1112.)

E. As to this May 12, 1994 submission, Pillich complains that his pleas to me to give him several weeks to retain counsel have fallen on deaf ears. He made that request initially in his April 25, 1994 letter (eight weeks ago), and despite the "multimillion" dollars in assets he claims to possess (but has never disclosed or described) he still has not retained an attorney. Given such resources, his complaints about lack of opportunity to retain counsel are patently frivolous (unless he is being less than forthright about his having "multimillions" in

assets).

F. The Debtor accuses this Court of "discrimination" or being "overly prejudicial" against him. He seems to believe that any adverse decision I might render is "discriminatory" if there was some earlier ruling I rendered, that was also adverse. In a case two years ago involving a corporation run by Pillich the Trustee said that Pillich had failed to return \$11,000 to the corporation and I ordered Pillich to pay. The Trustee later advised that he was in error in requesting the order, for the amount had indeed been paid. Pillich now suggests that subsequent rulings against him by me are "discriminatory." I take this as an allegation of bias or prejudice (since a claim of "discrimination" makes no sense), and reject the allegation. That I have ruled against Pillich on one or more occasions in which his credibility was at issue does not make me biased or prejudiced against him. Whether considered under 28 U.S.C. § 144 or § 455, rulings based only on evidence properly before the Judge as a factfinder cannot be the basis of "bias" or "prejudice" that warrants recusal.

G. Although Pillich refers to the property at 2438 West Oakfield Road (the residence owned by his wife, currently appraised at \$375,000) as "the necessary single property essential to reorganization," he fails again now (as he did in response to the Motion to Lift Stay) to provide the slightest suggestion as to how his wife's home is essential to reorganization of his own bankruptcy estate. How his creditors might benefit from protection

of his wife's land escapes this Court, in the absence of a commitment from his wife to commit her assets to her husband's debts.

His other claims have been considered and are similarly without merit. Consequently, the motion to reconsider this Court's Orders lifting the stay to permit Rupp to foreclose on Marsha Pillich's property, and converting this case from Chapter 11 to Chapter 7 (for, inter alia, failure to perform any of the duties of a Debtor-in-Possession), is denied. Viewed as a motion to recuse for bias or prejudice, it is also denied.

Viewing his submission as a Notice of Appeal requires consideration of his Application to Proceed In Forma Pauperis. Pillich claims pauper status. He failed to disclose his finances to this Court when acting as a D-I-P (a fiduciary), and has failed to file Schedules and statements even now. There are indications of assets. For example, it took this Court and its duly appointed Trustee Thomas Gaffney a year of dedicated effort in a related case, to get Pillich to disclose the activities and affairs of Project and Joint Ventures International, one of the several corporations he is known to own or have owned, such as Projects International Securities, Inc., Projects and Joint Ventures International - XII, Inc., and Projects and Real Estate Ventures

International - XII, Inc.² In yet another case, he and another man filed an involuntary bankruptcy petition against the owner of a commercial building to which Pillich claimed some sort of entitlement. Recently, in still another case here, his attorney Jeffrey Lazroe brought an action for, inter alia, an accounting against another debtor who was a former partner or joint-venturer with Pillich on other land deals: Lazroe withdrew Pillich's claims after I directed him to make certain that Pillich's duty to make restitution to the victims of his crimes permitted him to sue-out his claims in his own behalf. These facts all suggest that Pillich has had far-flung holdings. Indeed, in the present case he has in conclusory fashion claimed assets in the "multimillions." But under penalty of perjury on a one-side-of-one-page form (but no bankruptcy Schedules and Statements), he now claims that he is too poor to pay a \$105 filing fee to appeal my decisions. Until Pillich complies with all the duties of disclosure required of a Debtor in this Court, I will not credit his conclusory claims that he is unable to pay such a fee. The IFP Application too, then, is denied.

Pillich's submission is in all respects denied, except that it may proceed as a "Notice of Appeal" when Pillich either pays the fee or obtains leave from the District Court to proceed in

²These were co-defendants in Indictment No. 91-0629-SAG in State Supreme Court.

forma pauperis. .

SO ORDERED.

Dated: Buffalo, New York
June 21, 1994



U.S.B.J.